

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL CURTIS REYNOLDS,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 4:CV-07-161
	:	
EDWIN M. KOSIK, JUDGE, ET AL.,	:	(Judge McClure)
	:	
Defendants	:	

MEMORANDUM

January 31, 2007

Background

Michael Curtis Reynolds (“Plaintiff”), an inmate presently confined in the Lackawanna County Prison, Scranton, Pennsylvania, initiated this *pro se* civil rights action. Named as Defendants are Judge Edwin M. Kosik, Assistant United States Attorney (AUSA) John Gurganus, and Agent Larry Whitehead of the Federal Bureau of Investigation (FBI). The complaint is accompanied by a request for leave to proceed *in forma pauperis*. For the reasons set forth below, Reynolds’ complaint will be dismissed, without prejudice pursuant to the screening provisions of 28 U.S.C. § 1915(g).

The complaint challenges the legality of Reynolds' ongoing federal criminal prosecution. Specifically, he asserts that Agent Whitehead committed perjury before a federal grand jury. Plaintiff also contends that Attorney Gurganus, who is handling his prosecution, similarly committed perjury, slander, defamation of character and fraud. The complaint further maintains that Judge Kosik, who is presiding over Reynolds' ongoing criminal case, permitted the above described misconduct and has subjected the Plaintiff to illegal detainment. Record document no. 1, ¶ 4. As relief, Reynolds seeks compensatory and punitive damages.

Discussion

Under § 1915(g), a federal civil action by a prisoner proceeding in forma pauperis is barred if he or she:

has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Reynolds, while incarcerated, previously initiated the following civil actions which were dismissed by this Court under 28 U.S.C. § 1915(e)(2)(B) as being frivolous: Reynolds v. Lackawanna County Prison, Civil No. 4:06-CV-1190 (M.D. Pa. July 7, 2006)(complaint *sua sponte* dismissed as frivolous); Reynolds v. Gurganus, et al., Civil No. 4:06-CV-1753 (M.D. Pa. Sept. 11, 2006)(*sua sponte* dismissal on grounds that complaint is frivolous); Reynolds v. Kosik, et al., Civil No. 4:06-CV-2466 (M.D. Pa. Jan.18 , 2007)(complaint *sua sponte* dismissed as frivolous).

The gist of Plaintiff's present complaint, which is dated January 27, 2007, is his disagreement with actions occurring during his ongoing federal criminal prosecution.¹ The alleged unconstitutional conduct does not place this inmate in danger of imminent "serious physical injury" at the time his complaint was filed on January 29, 2007. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001), cert. denied, 533 U.S. 953 (2001). Pursuant to the standards announced in §1915(g), Reynolds' present civil rights action is barred under § 1915(g). An appropriate Order will enter.

s/ James F. McClure, Jr.
JAMES F. McCLURE, JR.
United States District Judge

UNITED STATES DISTRICT COURT

1. Plaintiff is presently the subject of an ongoing federal criminal prosecution in this district. See United States v. Reynolds, Case No. 3:05-CR-493. Jury selection and trial are presently scheduled for March, 2007.

FOR THE
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MICHAEL CURTIS REYNOLDS,

Plaintiff

v.

EDWIN M. KOSIK, JUDGE, ET AL.,

Defendants

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CIVIL NO. 4:CV-07-161

(Judge McClure)

ORDER

January 31, 2007

In accordance with the accompanying Memorandum,

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's complaint is dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to close the case.
3. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.
4. Plaintiff's accompanying motion for summary judgment (Record document no. 4) is DENIED as moot.

s/ James F. McClure, Jr.
JAMES F. McCLURE, JR.
United States District Judge